

must be reported on the revised or re-numbered form.

(f) *Effective/applicability date*—(1) *In general.* This section applies to taxable years ending on or after June 26, 2008.

(2) *Application to taxable years ending before June 26, 2008.* A small business refiner may apply this section to a taxable year ending before June 26, 2008, provided that the small business refiner applies all provisions in this section, with the modifications described in paragraph (f)(3) of this section, to the taxable year.

(3) *Modifications applicable to taxable years ending before June 26, 2008.* The following modifications to the rules of this section apply to a small business refiner that applies those rules to a taxable year ending before June 26, 2008:

(i) *Rules relating to section 179B election.* The section 179B election for a taxable year ending before June 26, 2008 may be made under the rules provided in Notice 2006-47, rather than under the rules set forth in paragraph (d) of this section.

(ii) *Rules relating to section 179B(e) election.* A section 179B(e) election for a taxable year ending before June 26, 2008 will be treated as satisfying the requirements of paragraph (f) if the cooperative small business refiner has calculated its tax liability in a manner consistent with the election and has used any reasonable method consistent with the principles of section 179B(e) to inform the Internal Revenue Service that an election has been made under section 179B(e) and to inform cooperative owners of the amount of the section 179B deduction they have been allocated.

(4) *Expiration date.* The applicability of § 1.179C-1T expires on June 24, 2011.

[T.D. 9404, 73 FR 36422, June 27, 2008]

§ 1.179C-1T Election to expense certain refineries (temporary).

(a) *Scope and definitions*—(1) *Scope.* This section provides the rules for determining the deduction allowable under section 179C(a) for the cost of any qualified refinery property. The provisions of this section apply only to a taxpayer that elects to apply section 179C in the manner prescribed under paragraph (d) of this section.

(2) *Definitions.* For purposes of section 179C and this section, the following definitions apply:

(i) *Applicable environmental laws* are any applicable Federal, state, or local environmental laws.

(ii) *Qualified fuels* has the meaning set forth in section 45K(c).

(iii) *Cost* is the unadjusted depreciable basis (as defined in § 1.168(b)-1(a)(3), but without regard to the reduction in basis for any portion of the basis the taxpayer properly elects to treat as an expense under section 179C and this section) of the property.

(iv) *Throughput* is a volumetric rate measuring the flow of crude oil or qualified fuels processed over a given period of time, typically referenced on the basis of barrels per calendar day.

(v) *Barrels per calendar day* is the amount of fuels that a facility can process under usual operating conditions, expressed in terms of capacity during a 24-hour period and reduced to account for down time and other limitations.

(vi) *United States* has the same meaning as that term is defined in section 7701(a)(9).

(b) *Qualified refinery property*—(1) *In general.* Qualified refinery property is any property that meets the requirements set forth in paragraphs (b)(2) through (b)(7) of this section.

(2) *Description of qualified refinery property*—(i) *In general.* Property that comprises any portion of a qualified refinery may be qualified refinery property. For purposes of section 179C and this section, a qualified refinery is any refinery located in the United States that is designed to serve the primary purpose of processing crude oil or qualified fuels.

(ii) *Nonqualified refinery property.* Refinery property is not qualified refinery property for purposes of this paragraph (b)(2) if—

(A) The primary purpose of the refinery property is for use as a topping plant, asphalt plant, lube oil facility, crude or product terminal, or blending facility; or

(B) The refinery property is built solely to comply with consent decrees or projects mandated by Federal, state or local governments.

(3) *Original use*—(i) *In general.* For purposes of the deduction allowable under section 179C(a), refinery property will meet the requirements of this paragraph (b)(3) if the original use of the property commences with the taxpayer. Except as provided in paragraph (b)(3)(ii) of this section, original use means the first use to which the property is put, whether or not that use corresponds to the use of the property by the taxpayer. Thus, if a taxpayer incurs capital expenditures to recondition or rebuild property acquired or owned by the taxpayer, only the capital expenditures incurred by the taxpayer to recondition or rebuild the property acquired or owned by the taxpayer satisfy the original use requirement. However, the cost of reconditioned or rebuilt property acquired by a taxpayer does not satisfy the original use requirement. Whether property is reconditioned or rebuilt property is a question of fact. For purposes of this paragraph (b)(3)(i), acquired or self-constructed property that contains used parts will be treated as reconditioned or rebuilt only if the cost of the used parts is more than 20 percent of the total cost of the property.

(ii) *Sale-leaseback.* If any new portion of a qualified refinery is originally placed in service by a person after August 8, 2005, and is sold to a taxpayer and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the taxpayer-lessor is considered the original user of the property.

(4) *Placed-in-service date*—(i) *In general.* Refinery property will meet the requirements of this paragraph (b)(4) if the property is placed in service by the taxpayer after August 8, 2005, and before January 1, 2012.

(ii) *Sale-leaseback.* If a new portion of refinery property is originally placed in service by a person after August 8, 2005, and is sold to a taxpayer and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the property is treated as originally placed in service by the taxpayer-lessor not earlier than the date on which the property is used by the lessee under the leaseback.

(5) *Production capacity*—(i) *In general.* Refinery property is considered qualified refinery property if—

(A) It enables the existing qualified refinery to increase the total volume output, determined without regard to asphalt or lube oil, by at least five percent on an average daily basis; or

(B) It enables the existing qualified refinery to increase the percentage of total throughput attributable to processing qualified fuels to a rate that is at least 25 percent of total throughput on an average daily basis.

(ii) *When production capacity is tested.* The production capacity requirement of this paragraph (b)(5) is determined as of the date the property is placed in service by the taxpayer. Any reasonable method may be used to determine the appropriate baseline for measuring capacity increases and to demonstrate and substantiate that the capacity of the existing qualified refinery has been sufficiently increased.

(iii) *Multi-stage projects.* In the case of multi-stage projects, a taxpayer must satisfy the reporting requirements of paragraph (f)(2) of this section, sufficient to establish that the production capacity requirements of this paragraph (b)(5) will be met as a result of the taxpayer's overall plan.

(6) *Applicable environmental laws*—(i) *In general.* The environmental compliance requirement applies only with respect to refinery property, or any portion of refinery property, that is placed in service after August 8, 2005. A refinery's failure to meet applicable environmental laws with respect to a portion of the refinery that was in service prior to August 8, 2005 will not disqualify a taxpayer from making the election under section 179C(a) with respect to otherwise qualifying refinery property.

(ii) *Waiver under the Clean Air Act.* Refinery property must comply with the Clean Air Act, notwithstanding any waiver received by the taxpayer under that Act.

(7) *Construction of property*—(i) *In general.* Qualified property will meet the requirements of this paragraph (b)(7) if—

(A) The property is placed in service by the taxpayer after August 8, 2005, and before January 1, 2012; and

(B) No written binding contract for the construction of the property was in effect before June 14, 2005.

(ii) *Definition of binding contract*—(A) *In general.* A contract is binding only if it is enforceable under state law against the taxpayer or a predecessor, and does not limit damages to a specified amount (for example, by use of a liquidated damages provision). For this purpose, a contractual provision that limits damages to an amount equal to at least 5 percent of the total contract price will not be treated as limiting damages to a specified amount. In determining whether a contract limits damages, the fact that there may be little or no damages because the contract price does not significantly differ from fair market value will not be taken into account.

(B) *Conditions.* A contract is binding even if subject to a condition, as long as the condition is not within the control of either party or the predecessor of either party. A contract will continue to be binding if the parties make insubstantial changes in its terms and conditions, or if any term is to be determined by a standard beyond the control of either party. A contract that imposes significant obligations on the taxpayer or a predecessor will be treated as binding, notwithstanding the fact that insubstantial terms remain to be negotiated by the parties to the contract.

(C) *Options.* An option to either acquire or sell property is not a binding contract.

(D) *Supply agreements.* A binding contract does not include a supply or similar agreement if the payment amount and design specification of the property to be purchased have not been specified.

(E) *Components.* A binding contract to acquire one or more components of a larger property will not be treated as a binding contract to acquire the larger property. If a binding contract to acquire a component does not satisfy the requirements of this paragraph (b)(7), the component is not qualified refinery property.

(iii) *Self-constructed property*—(A) *In general.* Except as provided in paragraph (b)(7)(iii)(B) of this section, if a taxpayer manufactures, constructs, or

produces property for use by the taxpayer in its trade or business (or for the production of income by the taxpayer), the construction of property rules in this paragraph (b)(7) are treated as met for qualified refinery property if the taxpayer began manufacturing, constructing, or producing the property after June 14, 2005, and before January 1, 2008. Property that is manufactured, constructed or produced for the taxpayer by another person under a written binding contract (as defined in paragraph (b)(7)(ii) of this section) that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business (or for the production of income) is considered to be manufactured, constructed, or produced by the taxpayer.

(B) *When construction begins.* For purposes of this paragraph (b)(7)(iii), construction of property generally begins when physical work of a significant nature begins. Physical work does not include preliminary activities such as planning or designing, securing financing, exploring, or researching. The determination of when physical work of a significant nature begins depends on the facts and circumstances. Nevertheless, physical work of a significant nature will be deemed to have begun for purposes of this paragraph (b)(7)(iii)(B), and the construction of the property will be deemed to have met the requirements of paragraph (b)(7)(iii)(A) of this section, if the taxpayer performed some physical work before January 1, 2008 (such as clearing a site or excavation) and has performed physical work of a significant nature (as defined in Treas. Regs. § 1.168(k)-1(b)(4)(iii)(B)) before October 7, 2008.

(C) *Components of self-constructed property*—(1) *Acquired components.* If a binding contract (as defined in paragraph (b)(7)(ii) of this section) to acquire a component of self-constructed property is in effect on or before June 14, 2005, the component does not satisfy the requirements of paragraph (b)(7)(i) of this section, and is not qualified refinery property. However, if construction of the self-constructed property

begins after June 14, 2005, the self-constructed property may be qualified refinery property if it meets all other requirements of section 179C and this section (including paragraph (b)(7)(i) of this section), even though the component is not qualified refinery property. If the construction of self-constructed property begins before June 14, 2005, neither the self-constructed property nor any component related to the self-constructed property is qualified refinery property. If the component was acquired before January 1, 2008, but the construction of the self-constructed property begins after December 31, 2007, the component may qualify as qualified refinery property even if the self-constructed property is not qualified refinery property.

(2) *Self-constructed components.* If the manufacture, construction, or production of a component fails to meet any of the requirements of paragraph (b)(7)(iii) of this section, the component is not qualified refinery property. However, if the manufacture, construction, or production of a component fails to meet any of the requirements provided in paragraph (b)(7)(iii) of this section, but the construction of the self-constructed property begins after June 14, 2005, the self-constructed property may qualify as qualified refinery property if it meets all other requirements of section 179C and this section (including paragraph (b)(7)(i) of this section). If the construction of the self-constructed property begins before June 14, 2005, neither the self-constructed property nor any components related to the self-constructed property are qualified refinery property. If the component was self-constructed before January 1, 2008, but the construction of the self-constructed property begins after December 31, 2007, the component may qualify as qualified refinery property, although the self-constructed property is not qualified refinery property.

(c) *Computation of expense deduction for qualified refinery property.* In general, the allowable deduction under paragraph (d) of this section for qualified refinery property is determined by multiplying by 50 percent the cost of the qualified refinery property paid or incurred by the taxpayer.

(d) *Election*—(1) *In general.* A taxpayer may make an election to deduct as an expense 50 percent of the cost of any qualified refinery property. A taxpayer making this election takes the 50 percent deduction for the taxable year in which the qualified refinery property is placed in service.

(2) *Time and manner for making election*—(i) *Time for making election.* An election specified in this paragraph (d) generally must be made not later than the due date (including extensions) for filing the original Federal income tax return for the taxable year in which the qualified refinery property is placed in service by the taxpayer. However, a taxpayer that did not claim the section 179C(a) deduction on a Federal income tax return filed for a taxable year ending prior to July 9, 2008 but wishes to claim the deduction for that taxable year may do so by properly making a section 179C(a) election under this paragraph (d) on an amended return filed by December 31, 2008.

(ii) *Manner of making election.* The taxpayer makes an election under section 179C(a) and this paragraph (d) by entering the amount of the deduction at the appropriate place on the taxpayer's timely filed original Federal income tax return for the taxable year in which the qualified refinery property is placed in service (or on the amended return, as provided in paragraph (d)(2)(i) of this section), and attaching a report as specified in paragraph (f) of this section to the taxpayer's timely filed original Federal income tax return for the taxable year in which the qualified refinery property is placed in service (or on the amended return, as provided in paragraph (d)(2)(i) of this section).

(3) *Revocation of election*—(i) *In general.* An election made under section 179C(a) and this paragraph (d), and any specification contained in such election, may not be revoked except with the consent of the Commissioner of Internal Revenue.

(ii) *Revocation prior to the revocation deadline.* A taxpayer is deemed to have requested, and to have been granted, consent of the Commissioner to revoke an election under section 179C(a) and

this paragraph (d) if the taxpayer revokes the election before the revocation deadline. The revocation deadline is the later of December 31, 2008, or 24 months after the due date (including extensions) for filing the taxpayer's Federal income tax return for the taxable year for which the election applies. An election under section 179C(a) and this paragraph (d) is revoked by attaching a statement to an amended return for the taxable year for which the election applies. The statement must specify the name and address of the refinery for which the election applies and the amount deducted on the taxpayer's original Federal income tax return for the taxable year for which the election applies.

(iii) *Revocation after the revocation deadline.* An election under section 179C(a) and this paragraph (d) may not be revoked after the revocation deadline. The revocation deadline may not be extended under § 301.9100-1.

(iv) *Revocation by cooperative taxpayer.* A taxpayer that has made an election to allocate the section 179C deduction to cooperative owners under section 179C(g) and paragraph (e) of this section may not revoke its election under section 179C(a).

(e) *Election to allocate section 179C deduction to cooperative owners—(1) In general.* If a cooperative taxpayer makes an election under section 179C(g) and this paragraph (e), the cooperative taxpayer may elect to allocate all, some, or none of the deduction allowable under section 179C(a) for that taxable year to the cooperative owner(s). This allocation is equal to the cooperative owner(s)' ratable share of the total amount allocated, determined on the basis of each cooperative owner's ownership interest in the cooperative taxpayer. For purposes of this section, a cooperative taxpayer is an organization to which part I of subchapter T applies, and in which another organization to which part I of subchapter T applies (cooperative owner) directly holds an ownership interest. No deduction shall be allowed under section 1382 for any amount allocated under this paragraph (e).

(2) *Time and manner for making election—(i) Time for making election.* A cooperative taxpayer must make the

election under section 179(g) and this paragraph (e) by the due date (including extensions) for filing the cooperative taxpayer's original Federal income tax return for the taxable year to which the cooperative taxpayer's election under section 179C(a) and paragraph (d) of this section applies.

(ii) *Manner of making election.* An election under this paragraph (e) is made by attaching to the cooperative taxpayer's timely filed Federal income tax return for the taxable year (including extensions) to which the cooperative taxpayer's election under section 179C(a) and paragraph (d) of this section applies a statement providing the following information:

(A) The name and taxpayer identification number of the cooperative taxpayer.

(B) The amount of the deduction allowable to the cooperative taxpayer for the taxable year to which the election under section 179C(a) and paragraph (d) of this section applies.

(C) The name and taxpayer identification number of each cooperative owner to which the cooperative taxpayer is allocating all or some of the deduction allowable.

(D) The amount of the allowable deduction that is allocated to each cooperative owner listed in paragraph (e)(2)(ii)(C) of this section.

(3) *Written notice to owners.* If any portion of the deduction allowable under section 179C(a) is allocated to a cooperative owner, the cooperative taxpayer must notify the cooperative owner of the amount of the deduction allocated to the cooperative owner in a written notice, and on Form 1099-PATR, "Taxable Distributions Received from Cooperatives." This notice must be provided on or before the due date (including extensions) of the cooperative taxpayer's original Federal income tax return for the taxable year for which the cooperative taxpayer's election under section 179C(a) and paragraph (d) of this section applies.

(4) *Irrevocable election.* A section 179C(g) election, once made, is irrevocable.

(f) *Reporting requirement—(1) In general.* A taxpayer may not claim a deduction under section 179C(a) for any taxable year unless the taxpayer files a

report with the Secretary containing information with respect to the operation of the taxpayer's refineries.

(2) *Information to be included in the report.* The taxpayer must specify—

(i) The name and address of the refinery;

(ii) Under which production capacity requirement under section 179C(e) and paragraph (b)(5)(i)(A) and (B) of this section the taxpayer's qualified refinery qualifies;

(iii) Whether the refinery is qualified refinery property under section 179C(d) and paragraph (b)(2) of this section, sufficient to establish that the primary purpose of the refinery is to process liquid fuel from crude oil or qualified fuels.

(iv) The total cost basis of the qualified refinery property at issue for the taxpayer's current taxable year; and

(v) The depreciation treatment of the capitalized portion of the qualified refinery property.

(3) *Time and manner for submitting report*—(i) *Time for submitting report.* The taxpayer is required to submit the report specified in this paragraph (f) not later than the due date (including extensions) of the taxpayer's Federal income tax return for the taxable year in which the qualified refinery property is placed in service. A taxpayer that has made a section 179C(a) election for a prior taxable year by claiming the section 179C(a) deduction on a Federal income tax return filed prior to July 23, 2008, but has not already filed a report for that year, must attach a report to its next Federal income tax return for each taxable year the taxpayer claimed the deduction but did not file a report.

(ii) *Manner of submitting report.* The taxpayer must attach the report specified in this paragraph (f) to the taxpayer's timely filed original Federal income tax return for the taxable year in which the qualified refinery property is placed in service.

(g) *Effective/applicability date.* This section is applicable for taxable years ending on or after July 9, 2008.

(h) *Expiration date.* The applicability of this section expires on or before July 1, 2011.

[T.D. 9412, 73 FR 39230, July 9, 2008]

§ 1.180-1 Expenditures by farmers for fertilizer, etc.

(a) *In general.* A taxpayer engaged in the business of farming may elect, for any taxable year beginning after December 31, 1959, to treat as deductible expenses those expenditures otherwise chargeable to capital account which are paid or incurred by him during the taxable year for the purchase or acquisition of fertilizer, lime, ground limestone, marl, or other materials to enrich, neutralize, or condition land used in farming, and those expenditures otherwise chargeable to capital account paid or incurred for the application of such items and materials to such land. No election is required to be made for those expenditures which are not capital in nature. Section 180, § 1.180-2, and this section are not applicable to those expenses which are deductible under section 162 and the regulations thereunder or which are subject to the method described in section 175 and the regulations thereunder.

(b) *Land used in farming.* For purposes of section 180(a) and of paragraph (a) of this section, the term *land used in farming* means land used (before or simultaneously with the expenditures described in such section and such paragraph) by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock. See section 180(b). Expenditures for the initial preparation of land never previously used for farming purposes by the taxpayer or his tenant (although chargeable to capital account) are not subject to the election. The principles stated in §§ 1.175-3 and 1.175-4 are equally applicable under this section in determining whether the taxpayer is engaged in the business of farming and whether the land is used in farming.

(74 Stat. 1001, 26 U.S.C. 180)

[T.D. 6548, 26 FR 1486, Feb. 22, 1961]

§ 1.180-2 Time and manner of making election and revocation.

(a) *Election.* The claiming of a deduction on the taxpayer's return for an amount to which section 180 applies for amounts (otherwise chargeable to capital account) expended for fertilizer, lime, etc., shall constitute an election